IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1173 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGWATSINH N SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1173 of 1994

MR VIJAY H.PATEL for Petitioner

MS RITA CHANDARANA, LD.AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 16/06/2004

ORAL JUDGEMENT

1. Bhagwatsinh Naransinh Solanki, petitioner has filed this petition under Articles 226 and 227 of the Constitution of India, with a prayer that this Court may be pleased to issue a writ of mandamus or any other

appropriate writ, order or directions quashing and setting aside the order of dismissal of the petitioner dated 20.11.1987 passed by the District Superintendent of Police, Amreli District, which is produced at Annexure "A" to the petition. The petitioner has further prayed that this Court may also be pleased to quash and set aside the order dated 22.2.1988 passed by the Deputy Inspector General of Police, Junagadh, which is an appellate order by which the appellate authority has confirmed the original order of dismissal. The petitioner further prayed that this Court may also be pleased to quash and set aside the order dated 1.10.93 passed by the Director General and Inspector General of Police, Gujarat State, in revision by which the revisional authority has also dismissed the revision and confirmed both the orders dated 20.11.87 and 22.2.88.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner was employed as Police Constable in Amreli City in the year 1964 and during his employment he has worked sincerely in the department. It may be noted that petitioner was suspended from service because a prohibition raid was carried out by police officer of the Amreli Police in his quarters which was allotted to him. In that proceedings he was ultimately acquitted and therefore he requested for cancellation of suspension order.

2.2 It may be noted that it is a case of the department that on 3.1.1984 the petitioner was found in drunken condition. Thereafter he was called in police chowky and panchnama was carried out and ultimately the department issued a show-cause-notice on 28.10.87. The petitioner filed reply to the said notice on 9.11.87. In the departmental inquiry, certificate of medical officer and FSL report was produced. Ultimately the authority believed the evidence and dismissed the petitioner by its order dated 20.11.87.

2.3 Being aggrieved and dissatisfied with the same, the petitioner filed appeal before IGP, Junagadh. The IGP Junagadh by its order dated 22.2.88 considered the report of blood analyses of the petitioner in which it was found that the petitioner has consumed liquor. Ultimately the appellate authority dismissed the appeal by its order dated 22.2.88.

2.4 Being aggrieved and dissatisfied with the said order, the petitioner filed revision before the

revisional authority i.e. Director General & Inspector General of Police, Gujarat State. The revisional authority by its order dated 1.10.93 considered both the orders in this behalf. The case of the petitioner that in the trial court during the same offence he was convicted for five years, however, in High Court appeal he was acquitted. The authority has considered the report of FSL, Junagadh and also analyses of blood. The authority after considering the analyses of blood and FSL report believed that there was contain of blood in petitioner and therefore allegation of the department that petitioner has consumed liquor to be found correct. In fact the petitioner has also admitted the guilt in an initial preliminary inquiry. In view of the same, the said revision application was dismissed by the authority.

3. Mr.Vijay H.Patel, learned advocate for the petitioner has tried to assail the aforesaid order of the authorities in this behalf. He has made various submissions in support of the said contention. He submitted that the order of the authorities is without jurisdiction and there is no evidence against the petitioner regarding consumption of liquor.

4. As against that, learned AGP Ms.Rita Chandarana for the respondents has submitted that in this case there is a three orders of authorities and there is concurrent finding of fact by the authorities that the petitioner has consumed liquor. The authorities have considered the report of blood analyses and also FSL report which conclusive shows that the petitioner has consumed liquor. She further submitted that it is true that in a criminal matter the trial court has convicted for five years but he has been acquitted by the High Court. However, burden of proof in criminal matters and departmental inquiry are quite different. In a departmental inquiry, once the authority comes to a definite conclusion and the authority has relied upon the same, this Court under Articles 226/227 of the Constitution of India may not interfere with the same. The authorities have passed the order based upon the evidence on record and there is no illegality or irrationality in the order of the authority in this behalf. The authorities have given very cogent and convincing reasons and therefore this Court may not interfere with the same in this behalf.

5. I have considered the rival submissions. I have also considered all the three orders of the authorities dated 20.11.87, 22.2.88 and 1.10.93. All the authorities have stated that the blood analyses report and FSL report clearly shows that the petitioner has consumed liquor.

In this case the petitioner belongs to police department and there is a policy of the State Government particularly in prohibition cases where consuming of the liquor is an offence, therefore, policeman on duty is to maintain the law and order and when he himself consume liquor, commits an offence so it is a grave misconduct as far as police officer is concerned.

6. The authority by its order dated 20.11.87 dismissed him from service and said order has been confirmed by the orders of authorities dated 22.2.88 and 1.10.93. This petition was filed by the petitioner somewhere in January, 1994. When the petition was filed, the petition was admitted on 13.4.94, however no interim relief was granted by this Court. So from the record, it appears that the petitioner is out of service from 1987 till today. In view of the fact that there is a grave misconduct committed by the petitioner consuming liquor which has been duly proved, I do not see any reasons to interfere with the findings of the authorities in this behalf. In view of the same, the petition is rejected with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

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